



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JANUARY 23, 2023

IN THE MATTER OF:

Appeal Board No. 626571

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board Nos. 626570, 626571, and 626572, the claimant appeals from the decisions of the Administrative Law Judge filed June 7, 2022, insofar as they sustained the initial determination holding the claimant ineligible to receive benefits, effective February 15, 2021, on the basis that the claimant was not capable of work, as modified to be effective February 26, 2021 through October 22, 2021; and sustained the initial determinations charging the claimant with an overpayment of \$8,512.00 in Pandemic Unemployment Assistance (PUA) recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a), and \$8,400.00 in Federal Pandemic Unemployment Compensation (FPUC) repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief, and Economic

Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by zero effective days and charging a civil penalty of \$2,536.80 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance on behalf of the claimant.

We have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made. The findings of fact and the opinion of the Administrative Law Judge are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board, except we find and conclude that the claimant

was eligible for partial benefits for the benefit week ending February 28, 2021, as the claimant was ineligible for benefits for only part of that week. The amount of the recoverable overpayment is modified to be consistent with the period of the claimant's ineligibility. Further, the amount of the civil monetary penalty is modified based on the amount of the overpayment. Accordingly, the amounts of the recoverable overpayment and civil monetary penalty are referred to the Department of Labor for recalculation.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is modified as follows, and, as so modified, is affirmed.

In Appeal Board No. 626570, the initial determination, holding the claimant ineligible to receive benefits, effective February 15, 2021, on the basis that the claimant was not capable of work, is modified to be effective February 26, 2021 through October 22, 2021, and, as so modified, is sustained.

In Appeal Board Nos. 626571 and 626572, the initial determinations, charging the claimant with an overpayment of \$8,512.00 in Pandemic Unemployment Assistance (PUA) recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a), and \$8,400.00 in Federal Pandemic Unemployment Compensation (FPUC) repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief, and

Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by zero effective days and charging a civil penalty of \$2,536.80 on the basis that the claimant made willful misrepresentations to obtain benefits, are modified in accordance with the claimant's ineligibility, and, as so modified, are sustained.

This matter is referred to the Department of Labor for recalculation of the amounts of the recoverable overpayment and civil monetary penalty.

MARILYN P. O'MARA, MEMBER